



Supreme Court of the United States

OCTOBER TERM 1945

No.

SANTO GRASSO,

Petitioner,

—against—

OIVIND LORENTZEN, Director of Shipping and Curator for
the ROYAL NORWEGIAN GOVERNMENT, operating as a NOR-
WEGIAN SHIPPING & TRADE MISSION,

Respondent.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

I

Opinion of the Court Below.

The opinion of the Circuit Court of Appeals for the Second Circuit in this case is to be found reported in 149 Fed. (2d) 127.

II

Statement of Jurisdiction.

The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code as amended by the Act of Con-

gress of February 13, 1925 (U. S. C., Title 28, Section 347). The judgment to be reviewed was filed on May 16, 1945.

III

Statement of the Case.

The facts, rulings of the courts below and questions presented are set forth in the foregoing petition, pages 1-9 thereof.

IV

Assignment of Errors.

The Circuit Court of Appeals erred in sustaining the decision of the Trial Court, sitting in Admiralty, which had rendered a decree in favor of a shipowner on an erroneous statement of law; that stevedores assume the risk of injury from the breaking of defective gear, owned and rigged by the vessel.

The Circuit Court of Appeals committed further error in denying substantive rights of Admiralty law, to a stevedore in an Admiralty action, holding that the libelant was a "plaintiff" and required to prove civil liability of negligence in order to recover, on a maritime tort.

Summary of Argument

1. Both under the English law as well as the American law it has always been mandatory for a shipowner to keep and maintain his vessel in a seaworthy condition provided with sufficient, adequate and proper gear and equipment, failing which the vessel was held liable for injuries caused through such violation of a non-delegable duty.

2. A stevedore has always been considered as a seaman although not necessarily a member of the crew.

International Stevedoring Company v. Haverty,
272 U. S. 50 (1926);

Atlantic Transport Company of West Virginia v. Imbrovek, 234 U. S. 52 (1914).

3. When any person employed aboard a ship was injured through the breaking of part of the ship's gear, he was not required to prove unseaworthiness of the vessel, it was always the shipowner that was under the duty to affirmatively prove seaworthiness in order to escape liability for the breaking of the ship's gear.

4. It has never been the law that a shipowner was absolved from liability by reason of the contributory negligence of a third party.

5. A stevedore never assumed the risk of injury due to the breaking of the defective ship's gear and equipment.

6. The Trial Court having resolved all of the issues of fact in favor of the libellant, it was error to state, in substance, that the Trial Court resolved any factual issue or drew any inference in favor of the respondent.

7. The petitioner was denied justice when the Circuit Court of Appeals denied him the benefits of Admiralty law and designated him a "plaintiff" and held that he had to prove negligence, in addition to unseaworthiness, in order to recover.

8. The Circuit Court of Appeals inadvertently mis-stated the facts as shown by the evidence and as found by the Trial Court.

9. The decision is contrary to the uniform prior holdings of this Court and is in conflict with the recent decision by the Third Circuit Court of Appeals in the case of *Sieracki v. Seas Shipping Co., Inc.*, *supra*, page 8.

POINT I

The rules as to liability for injury due to unseaworthiness of a vessel have been well settled.

Our Courts have uniformly held that when a person employed aboard a ship suffers injury through an unseaworthy condition or the breaking of defective ship's gear, that the vessel is liable.

The shipowner is presumed as a matter of law, to have made proper inquiry in respect to any latent defect and the petitioner was entitled to assume, that the strap was reasonably safe for the purpose intended. The strap having been used in the contemplated manner there being no apparent defect, the vessel is liable for the consequence of its breaking due to the hidden defect.

See:

Beadle v. Spencer, 298 U. S. 124;

Union Pacific Railway Company v. O'Brien, 161 U. S. 451;

Texas & P. R. R. Co. v. Archibald, 170 U. S. 665;

Gila Valley Ry. Co. v. Hall, 232 U. S. 94;

Choctaw, Oklahoma & Gulf R. R. Co. v. McDade, 191 U. S. 64;

Texas & P. R. R. Co. v. Swearingen, 196 U. S. 51;

Zinnel v. U. S. Shipping Board (C. C. A. N. Y.) 10 F. (2d) 47.

POINT II

A stevedore employed aboard a vessel never assumes the risk of injury due to defective gear.

The law is well settled that only risks normally incident to his calling are assumed by a person employed aboard a vessel and never the risk of defective gear breaking and causing injury.

In the case of *Faunterloy v. Argonaut S. S. Line*, 27 Fed. (2d) 50, the Court stated on page 51:

“Neither libelant nor his employer, the stevedore, were charged with any duty in respect to this part of the ship’s tackle. Each had a right to assume that it was free from any defects not observable in the exercise of ordinary care. Whatever duty there was to fasten the turnbuckle, so that it would not fall, was imposed on the vessel.”

To the same effect see:

Liverani v. Clark & Son, 231 N. Y. 178;

Port of New York Stevedoring Corporation v. Castagna, 280 Fed. 618, cert. den. 258 U. S. 631;

The Chiswick, 231 Fed. 452;

Anglo-Patagonian, 235 Fed. 92.

POINT III

When ship's gear breaks and causes an accident, the shipowner has the burden of proving seaworthiness, failing which he is liable for damages to the injured person.

The petitioner was entitled to all the rights under Admiralty law and the Circuit Court of Appeals erred in treating him as a "plaintiff" in a civil action, requiring him to prove negligence, after he had proven that the accident was caused through the breaking of respondent's ship's gear and equipment.

The Circuit Court of Appeals inadvertently made many material mis-statements of fact.

a. The Circuit Court of Appeals stated in its opinion that "some" strands of the wire rope were defective. The fact is that the evidence showed and the Trial Court found that the wire rope was rusted through and through (ff. 189, 581).

b. The Circuit Court of Appeals found that the strap was bent over a "comparatively narrow gusset plate". From this one would naturally assume that the gusset plate in some way cut, frayed or damaged the strap or otherwise contributed to its breaking. The uncontradicted evidence however is that there was no sign of any cutting or fraying of the cable by the gusset plate or anything else (f. 364). It broke solely because it was rusted through and through (ff. 189, 364, 581).

c. The Circuit Court of Appeals found that the cable strap was "subject to heavy wear". The uncontradicted

testimony was that the strap was capable of withstanding a strain of 18 to 20 tons, if in good condition. It was used to withstand no more than 7 tons at a time. The phraseology of the opinion seemed to indicate that two days use of the strap in moving 15 or 16 crates had something to do with its breaking. There was no such testimony. The testimony was that if the strap were in good condition it would not only last during the moving of 15 or 16 crates weighing from 4 to 7 tons, but would last throughout the loading operation of the S.S. "Torvanger" moving crates weighing up to 18 to 20 tons and would *not* break (f. 159).

d. The Circuit Court of Appeals speaks of conflicting permissible inferences and the right of the Trial Court to make its own determination. Assuming that there were permissible inferences (although none of the facts as to the condition of the strap and the manner of the happening of the accident were controverted) the Trial Court having decided all the factual issues in favor of the libelant (ff. 581-582), said libelant was entitled to a decree in his favor on the very statement of the Circuit Court of Appeals.

e. Finally, in the last sentence, the Circuit Court of Appeals speaks "of the failure by the plaintiff" to prove that his injuries were caused by negligence, completely missing the point in the case and the question before said Circuit Court of Appeals, that the action was predicated upon the *unseaworthiness* of the vessel and that the *plaintiff did not have to prove negligence* and that the respondent had failed to prove the seaworthiness of the vessel, after it was proven that the accident was caused through the breaking of one of the ship's defective cable straps.

POINT IV

The Lower Court's interpretation of the law is in conflict with the uniform decisions of this Court.

The statement quoted by the Lower Court does not rule this case and the decision is inconsistent with the decision in the case of *The Frank and Willie*, 45 Fed. Rep. 494, where on page 496 the Court said:

"In the case of the *Kate Cann*, 2 Fed. Rep. 241-245, the bark was held by Benedict J., liable to an injured stevedore, because the dunnage and plank where he was required to work in the ship's hold had not been properly secured, the dangerous situation being held a violation of a duty that the ship and her owners owed to the workmen. The same principle has been repeatedly applied in this Court in favor of stevedores or their employees on board. *The Helios*, 12 Fed. Rep. 732; *The Max Morris*, 24 Fed. Rep. 860; *The Guillermo*, 26 Fed. Rep. 921; *The Nebo*, 40 Fed. Rep. 31."

Where a vessel has committed a breach of duty she must show, not only, that her fault did not cause the accident but that her fault or neglect could not have caused the accident. See:

Belden v. Chase, 150 U. S. 674.

The decision of the Court below is also in conflict with the following cases:

The Osceola, 189 U. S. 158;

International Stevedoring Company v. Haverty,
272 U. S. 50 (1926);

Atlantic Transport Company of West Virginia v. Imbrovek, 234 U. S. 52 (1914);
Beadle v. Spencer, 298 U. S. 124;
The Arizona v. Anelick, 298 U. S. 110;
The H. A. Scandrett, 87 Fed. (2d) 708.

POINT V

The Lower Court's interpretation of the case at bar is in conflict with the decision that it handed down in the case of *The H. A. Scandrett*, 87 Fed. (2d) 708, and in conflict with the decision that it handed down in the case of *Gucciardi v. Chisholm, et al.*, 145 Fed. (2d) 514.

In the case at bar the lower Court held that in order to recover it was necessary for the petitioner, called "plaintiff" by the lower Court, to prove negligence but it did not hold that to be the law when it decided the case of *The H. A. Scandrett, supra*, but on the contrary stated as follows on page 710:

"This is not an action under the Jones Act (41 Stat. 988) founded on negligence. The libellant is invoking a remedy based on unseaworthiness or defective condition of the vessel or her equipment. In such a case the liability for any injuries arising out of the neglect to supply a seaworthy vessel is not dependent on the exercise of reasonable care but is absolute. This, we think, follows from *The Osceola*, 189 U. S. 158, 175, 23 S. Ct. 483, 47 L. Ed. 760; *Chelentis v. Luckenbach S. S. Co.*, 247 U. S. 372, 379, 381, 38 S. Ct. 501, 62 L. Ed. 1171; *Carlisle Packing Co. v. Sandanger*, 259 U. S. 255, 259, 42 S. Ct. 475, 476, 66 L. Ed. 927; *Pacific S. S. Co. v. Peterson*, 278 U. S. 130, 134, 49 S. Ct. 75, 76, 73

L. Ed. 220; *The Arizona v. Anelich*, 298 U. S. 110, 119-121, 56 S. Ct. 707, 709, 710, 80 L. Ed. 1075. See also, the *Edwin I. Morrison*, 153 U. S. 199, 14 S. Ct. 823, 38 L. Ed. 688; and *Storgard v. France and Canada Steamship Corp. (C. C. A.)* 263 F. 545, certiorari denied 252 U. S. 585, 40 S. Ct. 394, 64 L. Ed. 729."

In the *Gucciardi* case *supra*, the Court stated at page 516:

"It is well settled that when a shipowner or charterer in exclusive control and possession of a vessel furnishes gear for use by an independent contractor, he is under a duty to use care to furnish safe appliances, provided they are used in the contemplated manner. *The Spokane* (2 Cir.), 1924 A. M. C. 56, 294 Fed. 242, 245; *Liverani v. John T. Clark & Son*, 231 N. Y. 178, 131 N. E. 881; *Peloso v. City of New York*, 210 App. Div. 265, 205 N. Y. S. 606. While the independent contractor may himself be guilty of negligence if he permits the use of obviously defective gear, he may to some extent rely upon the duty of the shipowner to furnish initially safe appliances. *Liverani* case, *supra*, 231 N. Y. page 181, 131 N. E. 881; *Luckenbach S. S. Co. v. Buzynski* (5 Cir.), 1927 A. M. C. 1185, 19 F. (2d) 871, 873, reversed on another point, 277 U. S. 226, 1928 A. M. C. 921; *Port of New York Stevedoring Corp. v. Castagna* (2 Cir.) 280 Fed. 618, 620, certiorari denied 258 U. S. 631."

POINT VI

The Lower Court's interpretation of the law is in conflict with that of the Circuit Court of Appeals for the Third Circuit.

The Lower Court refused to extend to the petitioner any of the rights of a seaman injured aboard a vessel. This is in conflict with the decision in the case of *Sieracki v. Seas Shipping Co., Inc.*, 1945 A. M. C. 407, 149 Fed. (2d) 98.

The Third Circuit Court of Appeals stated on page 101:

"This leaves us with the last and most difficult question in the case. Granted that no negligence on the part of the ship owner has been shown, is the owner, nevertheless, liable to this longshoreman because the defective shackle made the vessel unseaworthy? The District Court found as a fact that the accident occurred by reason of the unseaworthiness of the vessel. We think it is undisputed that if the falling boom had hit one of the sailors the injured seaman could have recovered from the ship's owner, or the ship, on the basis of breach of warranty of seaworthiness, that warranty not being dependent upon a showing of negligence at all. *Mahnich v. Southern Steamship Co.*, 321 U. S. 96 (1944); *The H. A. Scandrett*, 87 F. (2d) 708 (C. C. A. 2, 1937). Is the longshoreman entitled to this same protection? It is clear that so far as the "warranty" depends upon contract, plaintiff was not a party to a contract with the ship owner. He was employed by the independent stevedore contractor. This does not necessarily settle the question. The term "warranty" used in this connection is a term used to describe a resulting legal liability, not to give a reason for it. The legal liability is not based upon fault, but is in the nature of insurers' liability, rooted in the admiralty law.

What, then, are the reasons for and against the application of the protection against injuries from unseaworthiness to one engaged in loading and stowing a ship's cargo? There is no question that in fact such service is necessary in the performance of the business of the ship. Formerly the work was done by the ship's crew, but owing to the demand for rapidity and special skill it has become a special service, one which has been called 'as clearly identical with maritime affairs as are the mariners'. And so an injury to a stevedore comes within the classification of a marine tort. *Atlantic Transport Company of West Virginia v. Imbrovek*, 234 U. S. 52 (1914). It seems, therefore, that when a man is performing a function essential to maritime service on board a ship the fortuitous circumstances of his employment by the ship owner or a stevedoring contractor should not determine the measure of his rights. This is the very basis on which the Jones Act was held applicable to give redress to an injured stevedore in *International Stevedoring Company v. Haverty*, 272 U. S. 50 (1926), commented upon in 27 Col. L. Rev. 211. See also *Urvic, Administratrix v. F. Jarka Company, Incorporated, et al.*, 282 U. S. 234 (1931).

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It seems to us that the weight of the argument favors an extension of the protection to the stevedore's employee during the period when he is actually engaged upon a ship in the loading or unloading thereof. He is working in marine employment and is subject to all its risks for the time being. The fact that the exigencies of modern commerce have called in additional help for loading and unloading does not make the undertaking any less a marine transaction and rightly subject to the rules of law for the protection of workers who

take the risks of such transactions. We do not hold that a stevedore is entitled to everything that a seaman may claim. All we are deciding now is that if he is injured on the ship in the course of unloading or loading the vessel he may have redress for a defect caused by its unseaworthiness.

We have found no decision which gives consideration and discussion to the point now before us. There are statements and assumptions each way. In *W. J. McCahan Sugar Refining & Molasses Co. v. Stoffel*, 41 F. (2d) 651 (C. C. A. 3, 1930) Judge Wooley says, page 654, 'The law regards a longshoreman or stevedore, injured while engaged in maritime service aboard a ship lying in navigable waters, as a seaman with all his peculiar rights and immunities.' In *Cassil v. United States Emergency Fleet Corporation, et al.*, 289 Fed. 774 (C. C. A. 9, 1923) the court says that a stevedore, injured while loading a ship could hold the owner of the vessel 'only on the theory that the vessel was unseaworthy in respect to the instrument whereby his injuries were occasioned'. On the other hand, there are a number of decisions in which it is either assumed, or stated, without discussion or elaboration, that the duty owed by the ship owner to the employee of the stevedore is only that of reasonable care.

In other words, the responsibility is the same as that of any occupier of premises toward a business guest. *Panama Mail Steamship Co. v. Davis*, 79 F. (2d) 430 (C. C. A. 3, 1935) (in this case the standard of reasonable care as a measure of duty was agreed upon by both sides); *Bryant v. Vestland*, 52 F. (2d) 1078 (C. C. A. 5, 1931); *Luckenbach S. S. Co., Inc., et al. v. Buzynski*, 19 F. (2d) 871 (C. C. A. 5, 1927), rev'd on another ground 277 U. S. 226 (1928); *The Howell*, 273 Fed. 513

(C. C. A. 2, 1921); *The Student*, 243 Fed. 807 (C. C. A. 4, 1917), cert. den. 245 U. S. 658 (1917); *Jeffries, et al. v. DeHart*, 102 Fed. 765 (C. C. A. 3, 1900); *The Mercier*, 5 F. Supp. 511 (D. C. Ore. 1933), aff'd 72 F. (2d) 1008 (C. C. A. 9, 1934).

It will be observed that the numerical weight of decision in the lower federal courts seems against the view here expressed, although, as stated above, the point has been assumed rather than concluded as a result of the examination of principle and precedent. The logical trend of the Supreme Court authority is, we think, in favor of extending to the stevedore the rights of a seaman when engaged in marine employment. On principle we think he should have these rights, at least, to the extent called for by the facts of this case and we so decide."

CONCLUSION

For the reasons stated, and on the authority of the cases cited, it is respectfully submitted that the petition should be granted.


Respectfully submitted,

JACOB RASSNER,
Counsel for Petitioner.

GEORGE J. ENGELMAN,
Of Counsel.

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